

# **Legislative Audit Division**

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**State of Montana**



**Report to the Legislature**

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**June 1999**

## **Performance Audit Follow-Up**

### **Petroleum Storage Tank Release Cleanup Activities**

**Petroleum Tank Release Compensation Board  
Department of Environmental Quality  
Department of Justice**

The original audit contained sixteen recommendations for improving interagency communication and coordination and delivery of services to the regulated community. Follow-up audit work indicates most recommendations are either implemented or being implemented.

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June 1999

The Legislative Audit Committee  
of the Montana State Legislature:

This is our follow-up report on the performance audit of Petroleum Storage Tank Cleanup Activities. The three agencies involved in cleanup activities are the Petroleum Tank Release Compensation Board, the Department of Environmental Quality, and the Department of Justice. We found most recommendations are either implemented or being implemented. We included summary information from the original audit report in each follow-up section.

We wish to express our appreciation to the staff of the agencies for their cooperation and assistance during our follow-up work.

Respectfully submitted,

(Signature on file)

Scott A. Seacat  
Legislative Auditor

# **Legislative Audit Division**

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## **Performance Audit Follow-Up**

### **Petroleum Storage Tank Release Cleanup Activities**

**Petroleum Tank Release Compensation Board  
Department of Environmental Quality  
Department of Justice**

Members of the audit staff involved in this audit were Kent Wilcox and Jim Nelson.

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## **Appointed and Administrative Officials**

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### **Department of Environmental Quality**

Mark Simonich, Director

Denise Mills, Administrator, Remediation Division

### **Department of Justice**

Joseph P. Mazurek, Attorney General

Mike Batista, Administrator, Division of Criminal Investigation

Terry Phillips, State Fire Marshal, Fire Prevention and  
Investigation Bureau

### **Petroleum Tank Release Compensation Board**

Jean Riley, Executive Director

Tim Hornbacher, Chairman of the Board, Representative of Service  
Station Dealers

Dallas Herron, Vice-Chairman of the Board, Representative of the  
Independent Petroleum Marketers and Retailers

Gary Basso, Representative of the Insurance Industry

Mary Ann Sharon, Representative of the General Public

Terry Phillips, Representative of the Fire Prevention and  
Investigation Bureau, Department of Justice

Mark Simonich, Representative of the Department of Environmental  
Quality

Beth Dotson, Representative of the Petroleum Services Industry or  
Petroleum Release Remediation Consultant Industry



# Chapter I - Introduction

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## Introduction

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We conducted a follow-up review of the performance audit of Petroleum Storage Tank Release Cleanup Activities (96P-03). Agencies involved in petroleum storage tank cleanup activities are:

The Board -- Petroleum Tank Release Compensation Board.  
DEQ -- Department of Environmental Quality.  
DOJ -- Department of Justice.

The original report issued in December 1996 contained our projections of Petroleum Tank Release Compensation Fund solvency. We refer to this fund as the Petrofund. The report also contained recommendations to the respective agencies related to:

- ▶ Development of policies and procedures.
- ▶ Improving management information systems.
- ▶ Inter-agency communications.
- ▶ Monitoring of Petrofund expenditures.
- ▶ Board eligibility determinations for Petrofund reimbursements.
- ▶ Board claim reimbursement processing.

Our objectives for this audit follow-up were to reevaluate Petrofund solvency and to determine the implementation status of recommendations presented in the report. Another objective was to provide updated compliance information about petroleum storage tanks. To meet our objectives, we reviewed Petrofund revenues and claim reimbursement information. We interviewed management and program personnel. We reviewed agencies' management controls and applicable management information.

## Petrofund Background

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The 1989 Montana Legislature created the Petrofund to protect public health, safety, and the environment by helping tank owners pay for cleaning up leaks from petroleum storage tanks. The Petrofund provides tank owners with an incentive to comply with tank regulations; tank owners are required to comply with tank regulations to be eligible for Petrofund reimbursements for cleaning up contamination from leaking tanks. The legislature also created the Petrofund to help tank owners comply with federal and state financial assurance requirements for petroleum storage tanks.

## Chapter I - Introduction

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### December 1998 Tank Upgrade Deadline

The United States Environmental Protection Agency, commonly known as the EPA, implemented regulations designed to prevent releases and provide for early detection of and quick response to releases. The regulations require tank designs that minimize the risk of overfilling or spilling during fuel deliveries. The EPA required all underground storage tanks installed after December 1988 comply with the new regulations. The EPA implemented a ten-year phase-in period for tanks installed before 1988 to allow tank owners time to comply with the new requirements. The deadline for meeting all EPA requirements was December 22, 1998.

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### Most Underground Storage Tanks Meet EPA Standards

EPA and state regulations prohibit tank owners from using underground storage tanks (USTs) that do not meet the new requirements. Tank owners who continue using tanks that do not meet EPA standards are in violation of DEQ regulations and are not eligible for Petrofund reimbursements. Additionally, DEQ may take enforcement action against owners who fail to comply with state and federal regulations. If USTs do not meet EPA standards, tank owners have three options:

1. The owner can upgrade tanks to meet EPA standards. The owner must obtain a permit from DEQ to upgrade a tank.
2. The owner can permanently close the tank, which requires a DEQ permit and field oversight to determine if petroleum contamination exists. An owner may permanently close a tank either in the ground or by removing the tank from the ground. Typically, owners permanently close tanks by removing them from the ground.
3. The owner can temporarily close a UST for up to twelve months by notifying DEQ. The owner must remove all fuel from the tank and stop using the tank. The owner must either upgrade the tank or permanently close the tank within twelve months.

Table 1 identifies tanks in use and temporarily closed. The table also provides the number of tanks that meet UST standards.

**Table 1**  
**Underground Storage Tanks in Use or Temporarily Closed**  
**As of March 4, 1999**

	<b>Number of Tanks</b>	<b>Tanks in Compliance<sup>2</sup></b>
Tanks in Use	4,256	3,866 (91%)
Tanks Temporarily Closed <sup>3</sup>	615	476 (77%)

**Source: Compiled by the Legislative Audit Division from DEQ records.**

<sup>1</sup> The term tank includes underground piping connected to above-ground petroleum storage tanks.

<sup>2</sup> Compliance refers only to tanks meeting 1998 UST spill, overfill, corrosion protection, and closure requirements. Leak detection or other tank operating or management requirements are not included in these statistics.

<sup>3</sup> Does not include 126 USTs last used before DEQ began regulating USTs in 1989.

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**Reorganization**

In November 1997, the DEQ reorganized its operations, including the Remediation Division. The former Underground Storage Tank Program, which regulated USTs, became the Technical Services Bureau. The former Corrective Action Program, which regulated and monitored the remediation of petroleum releases, became the Hazardous Waste Site Cleanup Bureau.

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**Technical Services Bureau**

The Technical Services Bureau regulates underground storage tanks and is characterized as a release prevention program. Tank owners are required to register all USTs and underground piping connected to aboveground petroleum storage tanks with this bureau. The bureau approves the installation, modification, and removal of USTs. The bureau also enforces state and federal UST regulations using education, public information, and inspection activities. The bureau provides the Board with regulatory information used to make Petrofund eligibility determinations.

## Chapter I - Introduction

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### Hazardous Waste Site Cleanup Bureau

The Hazardous Waste Site Cleanup Bureau approves and monitors remediation activities undertaken by tank owners and consultants. We refer to this agency as the Cleanup Bureau. Bureau staff provide technical assistance to tank owners and consultants, and inspect and monitor remediation activities. Bureau staff also review reimbursement claims submitted to the Board to verify costs claimed are for work completed and necessary to remediate the release.

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### Department of Justice Activities

The DOJ's Fire Prevention and Investigation Bureau, commonly known as the Fire Marshal, regulates aboveground petroleum storage tanks. We refer to these tanks as ASTs. The Fire Marshal inspects AST facilities for compliance with the Uniform Fire Code. The Fire Marshal and local fire officials provide inspection information the Board uses for making eligibility determinations. There are AST installation, design, and operational requirements, but statute does not require that AST owners register tanks with either the Fire Marshal or DEQ.

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### Follow-Up Results

The original audit included 16 recommendations for improving agencies' Petrofund-related activities. Table 2 shows the status of recommendations contained in our report as determined by our follow-up work.

**Table 2**  
**Recommendation Status**

Implemented	8
Being Implemented	4
Partially Implemented	3
Not Implemented	1
<b>Total Number of Recommendations</b>	<b>16</b>

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### Implementation Summary

The agencies are developing policies and procedures to implement our recommendations. The DEQ implemented a new management information system that has improved the department's ability to track underground storage tanks and enforce state and federal regulations. The Board revised procedures for determining Petrofund eligibility and for processing reimbursement claims. The DEQ is developing a process for setting priorities for cleaning up petroleum contamination.

The three agencies have not addressed recommendations regarding interagency communication. The Board and DEQ have not implemented procedures to improve monitoring of cleanup reimbursements.

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### Report Organization

Our projections for Petrofund solvency are presented in Chapter II. In Chapter III, we summarize audit findings from the December 1996 audit report and discuss the implementation status of our recommendations. The agencies' responses to this follow-up audit are included after Chapter III.



## Chapter II - Petrofund Solvency

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### Introduction

One objective of this audit follow-up was to reevaluate current and future Petrofund solvency. A primary purpose of the Petrofund is to help tank owners pay for cleaning up eligible petroleum releases. To meet this purpose, the Petrofund must have money to reimburse owners for eligible costs.

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### Background

The Petrofund is the only funding source for Board operations. The Petrofund's primary source of revenue is a  $\frac{3}{4}$  cent per gallon petroleum storage tank fee. The fee is assessed on gasoline, diesel, aviation fuel, and heating oil. The Montana Department of Transportation collects the fee from petroleum distributors. The Petrofund also receives interest income and proceeds from occasional sales of equipment purchased with Petrofund money by tank owners and consultants.

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### Petrofund Solvency Projections

In the original audit report, we projected the Petrofund balance would continue to decline. We projected the cash balance would drop below \$1 million at the beginning of fiscal year 1999, and approach zero by the end of the fiscal year. The EPA requires the Petrofund maintain a balance of more than \$1 million to be considered a financial assurance mechanism for tank owners. We recommended the legislature and Board develop ways to protect the fund so the state could meet the statutory purposes of the fund. The 1997 Legislature gave the Board authority to borrow up to \$15 million from the Board of Investments to keep the Petrofund solvent.

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### Petrofund Loan

As projected, the Petrofund balance kept declining. The Board obtained a \$1.2 million loan from the Board of Investments in July 1997 to meet financial obligations and keep the Petrofund cash balance above \$1 million. With this loan and revenues from the per gallon storage tank fee, the Board has continued to meet financial obligations and maintain the necessary cash balance in the Petrofund.

## **Chapter II - Petrofund Solvency**

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### **Updated Petrofund Solvency Projections**

Using the same projection method used in the original audit report, we reevaluated fund solvency. Using previous and new claim and cost information, we project the Petrofund balance will keep declining. Our projections suggest the Petrofund balance will approach zero at the end of fiscal year 2000 and have a negative cash balance in early fiscal year 2001. We base our projection on the assumption the Board will reimburse tank owners at the previous three-year average of approximately \$5.5 million per year for cleanup work. If so, the Board may need another loan from the Board of Investments to pay claims in upcoming years. If annual reimbursements are less than \$5 million, the Board may not need another loan. This projection does not include Board payments on the current loan obligation.

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### **Conclusion**

We project the Petrofund balance will decline to a negative balance in early fiscal year 2001. However, our projections do not indicate there is a serious problem with the Petrofund cash balance or the Board's ability to meet statutory obligations. Since the Board can obtain more loans from the Board of Investments, the agency will be able to continue paying claim expenses and other obligations. However, the state will need to continue collecting the per gallon storage tank fee to continue paying claims, and until the Board repays the loans.



# Chapter III - Implementation Status

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## Introduction

The following sections provide information on the implementation status of recommendations presented in the original Petroleum Storage Tank Release Cleanup Activities audit report. Implementation statuses are defined as:

- ▶ **Implemented:** The agency completed implementation of the recommendation.
- ▶ **Being Implemented:** The agency started, but has not completed, implementing the recommendation.
- ▶ **Partially Implemented:** The agency implemented a portion of the recommendation, but has not acted, or does not intend, to fully implement the recommendation.
- ▶ **Not Implemented:** The agency decided not to implement the recommendation, or has not acted to implement the recommendation.

The first eleven recommendations relate to interagency communication and coordination among the Board, DEQ, and DOJ. The final five recommendations relate to Board eligibility determination and claim processing activities.

## The Board and DEQ Needed to Set UST Inspection Priorities

During the audit, we determined DEQ conducted a limited number of tank inspections. Additionally, DEQ reported to the EPA that between October 1994 and October 1996, more than 50 percent of the facilities inspected were in significant non-compliance with UST program requirements. We also noted Board and DEQ staff had not formally coordinated efforts to establish UST inspection priorities. The Board relies upon DEQ to provide compliance information for determining whether tanks are eligible for Petrofund reimbursements. However, DEQ frequently responded to Board inquiries that the department had not inspected the tanks; the Board assumed these tanks were in compliance with regulations.

### ***Prior Recommendation #1***

*We recommend both DEQ and [the Board] collaborate on development of tank regulatory strategies to coordinate accomplishment of their respective statutory and operational goals.*

## Chapter III - Implementation Status

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### Present Implementation Status

**DEQ implemented this recommendation.** The DEQ established a draft strategy in May 1998 to encourage compliance with the 1998 UST requirements. DEQ's enforcement strategy includes:

- ▶ Educating tank owners about the 1998 UST requirements.
- ▶ Providing technical assistance to help tank owners in meeting the new tank requirements.
- ▶ Identifying tank owners not in compliance with UST requirements.
- ▶ Taking enforcement action against owners who continue to operate and/or maintain tanks in violation of UST requirements.

The DEQ and Board also have coordinated efforts to meet Board needs for compliance information. When the Board requests compliance information, department staff review tank files and inspection information. If DEQ has not conducted a recent site inspection, the department requires the owner to provide tank management records. DEQ staff can then verify substantial compliance with UST regulations by reviewing file information and owner records.

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### **The Board and DEQ Needed to Coordinate Reporting of Compliance/Violation Information**

The Board and DEQ had different definitions of compliance. Statute requires tank owners to be in compliance with applicable state and federal regulations when a release occurs to be eligible for Petrofund reimbursements. The Board uses this statute to determine whether releases are eligible for Petrofund reimbursement.

DEQ, however, had a variable definition for "compliance," depending on whether a tank owner had agreed to a DEQ corrective action plan and demonstrated an effort to comply with DEQ requirements. For example, if a tank was in violation of state regulations but the tank owner had agreed to correct the violations, the department may have considered the tank owner "in compliance." These conflicting definitions resulted in confusion for DEQ and Board staff, and tank owners. We recommended the Board and DEQ develop a coordinated process for documenting tank owner compliance with Petrofund eligibility requirements.

## Chapter III - Implementation Status

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### ***Prior Recommendation #2***

*We recommend [the Board] and DEQ:*

- A. Reexamine their respective roles regarding tank owner compliance determinations; and,*
- B. Develop an active, coordinated, and comprehensive process for evaluating and documenting tank owner compliance with Petrofund eligibility requirements.*

### Present Implementation Status

**The DEQ and Board implemented this recommendation.** DEQ and Board management stated the agencies clarified their roles and responsibilities. DEQ now reports all violations to the Board. Department staff may inform the Board about whether the violations caused a release, or affected the extent or magnitude of a release. The Board, on the other hand, has sole responsibility for determining whether tank owners are eligible for Petrofund reimbursements.

Additionally, Board and DEQ staff schedule regular meetings to review each agency's file documentation, correct inaccurate information, and address potential eligibility questions. DEQ and Board management and staff said improved interagency communication and coordination resulted in more consistent eligibility determinations.

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### **DEQ Needed to Develop Policies and Procedures**

During the audit, we noted DEQ did not have comprehensive formal policies and procedures for Technical Services Bureau personnel, resulting in inconsistent documentation and enforcement. The lack of policies and procedures also limited the Board's ability to verify tank owners remained in compliance with UST regulations while receiving Petrofund reimbursements. We recommended the department develop policies and procedures for program operations.

### ***Prior Recommendation #3***

*We recommend DEQ's [Technical Services Bureau] develop, formalize, and implement comprehensive policies and procedures for the program's area of responsibility.*

## Chapter III - Implementation Status

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### Technical Services Bureau Should Improve Management Information

#### Present Implementation Status

**The department is implementing the recommendation.** DEQ is in the process of developing policies and procedures. Department management and staff have developed draft policies and procedures for database operations and enforcing UST regulations. DEQ management said the department needs additional work in this area, but did not provide a date when implementation would be complete.

The bureau was using a database with limited ability to provide necessary regulatory information about underground storage tanks. While employees could retrieve information about individual tanks from the database, they had limited ability to retrieve cumulative information, such as lists of tanks not in compliance with regulations. Furthermore, the bureau did not have current information on all tanks. We recommended the DEQ upgrade program management information.

#### ***Prior Recommendation #4***

*We recommend the DEQ:*

- A. *Upgrade the [Technical Services Bureau] program management information system to allow and provide for more detailed information to be collected and compiled on program activities.*
- B. *Have the [Technical Services Bureau] obtain additional source data from tank owners:*
  - 1. *To better identify tank facilities with increased release risk; and,*
  - 2. *To provide more detailed information which allows implementation of an inspection priority methodology.*

#### Present Implementation Status

**The department implemented this recommendation.** DEQ completed installation of a new automated management information system in December 1997. Department management and staff stated the new system has improved the bureau's ability to identify educational and enforcement needs, set priorities, and perform its regulatory duties. The bureau uses the system to identify tanks in violation of regulations and schedule inspection priorities. The department also established an Internet site for fuel distributors and the public to identify which tanks comply with regulations and can be filled with fuel.

The Technical Services Bureau also completed a tank re-notification process. The bureau required all tank owners provide updated tank information and verify new or corrected information. The bureau complemented the re-notification process with an abbreviated inspection process that focused on owner compliance with new UST requirements. The department updated and verified database information using the re-notification and abbreviated inspection processes.

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### **The DEQ Needed a Policy for Categorizing Petroleum Releases**

During the original audit, we noted the Hazardous Waste Site Cleanup Bureau did not have a formal policy for categorizing releases. We found bureau staff did not categorize releases consistently. In some instances, employees classified multiple releases as one release if it was more practical to cleanup contamination under one workplan.

DEQ's lack of a formal policy affected the Petrofund's potential liability for cleaning up releases and potential costs for tank owners. Statute allows the Board to reimburse tank owners up to \$1 million for each eligible release. However, tank owners also are required to make a copayment of \$17,500 for each eligible release. How the department classifies releases can increase or decrease a tank owner's copayment, and the potential liability to the Petrofund.

While DEQ has sole authority for categorizing releases, due to the Petrofund's potential liability we recommended the department and the Board jointly development a policy for categorizing releases.

#### ***Prior Recommendation #5***

*We recommend [the Board] and DEQ develop and implement a standardized policy and procedure for categorizing releases.*

#### **Present Implementation Status**

**The department is implementing this recommendation.** The department has drafted, but not formally adopted, a policy for categorizing releases. Cleanup Bureau management stated the draft policy provides more guidance to staff. Department management did not state when they would adopt a formal policy. The Board stated DEQ has sole responsibility for categorizing releases, but they would provide input at the department's request.

## Chapter III - Implementation Status

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### **The Board and DEQ Should Develop a Procedure for Tracking Remediation Costs**

After a release is discovered, a tank owner, or tank owner's consultant, develops a remediation workplan for proposed cleanup activities. A remediation workplan also includes the estimated costs for cleaning up the contamination. DEQ staff review proposed workplans to ensure proposed cleanup activities are necessary and appropriate. Board technical staff also review proposed workplans to ensure consultants' proposed rates for remediation activities are reasonable.

While workplans include detailed line-item cost estimates, owners and consultants were not required to reference claimed costs to the specific elements of an approved workplan. Consequently, Board staff were unable to track and compare actual and estimated costs and keep Cleanup Bureau staff and the Board informed when costs exceeded workplan estimates. Since both the Board and DEQ have responsibilities for reviewing and approving remediation workplans, we recommended the two agencies require claimed remediation costs be referenced to workplans sections.

#### ***Prior Recommendation #6***

*We recommend [the Board] and DEQ:*

- A. Require all Petrofund claims to be specifically referenced to applicable workplan sections; and,*
- B. Establish a procedure which allows comparison of estimated remediation costs to claimed remediation costs and initiates a subsequent evaluation of any differences.*

#### **Present Implementation Status**

**The Board and DEQ have not implemented this recommendation.**

The Board and DEQ now require tank owners and consultants to specify which workplan costs refer to, but they do not require owners or consultants to reference costs to specific workplan activities.

Additionally, we noted a remediation project could include multiple workplans (e.g., separate workplans for investigation, remediation, and monitoring). Tank owners and consultants can submit claimed costs for multiple workplans, but are not required to specify which costs are associated with a specific workplan. Board and DEQ management and staff remain unable to monitor and compare actual costs with estimated costs.

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### The Board and DEQ Should Establish Cleanup Priorities

According to statute, DEQ requires tank owners to cleanup petroleum contamination to established levels. In some circumstances, the department can waive remediation requirements if the release does not threaten human health or contamination is unlikely to further impact the environment. However, DEQ did not have a standard procedure for prioritizing contaminated sites. Furthermore, the Board is statutorily required to reimburse all eligible costs, subject to the availability of Petrofund money. Board management believed limited Petrofund resources should not be used to remediate releases that do not threaten human health or may not cause more damage to the environment. We recommended DEQ and the Board jointly develop a methodology for prioritizing releases.

#### ***Prior Recommendation #7***

*We recommend [the Board] and DEQ initiate joint, scheduled discussion of release remediation priorities.*

#### Present Implementation Status

**DEQ is implementing this recommendation.** DEQ is developing a risk-based corrective action (RBCA) approach for remediating petroleum releases. The Board, industry, other state and local agencies, and members of the public have been involved in the process.

DEQ is developing a two-tiered method for establishing remediation priorities. Tier 1 RBCA sets priorities for soil contamination. Tier 1 RBCA is near completion and DEQ management estimated Tier 1 RBCA will be completed by mid-1999.

DEQ is still developing Tier 2 RBCA, which addresses contamination of ground and surface water. DEQ management estimated development and implementation might not be completed until 2000. Since Tier 2 RBCA addresses water contamination, the department needs more time to consider the legal and policy implications for setting Tier 2 priorities. DEQ management said they may need to introduce legislation that authorizes the department to proceed with a RBCA approach to water contamination.

## Chapter III - Implementation Status

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### **The Board Should Increase Monitoring of DEQ's Petrofund Staff Activities**

According to statute, Petrofund money can fund DEQ staff positions used for administering and monitoring remediation projects. The staff positions are located in the Cleanup Bureau, which oversees cleanup projects. During the audit, we noted these staff sometimes worked on cleanup activities not eligible for Petrofund reimbursements. However, the department was not informing the Board about these staff activities at ineligible sites. Consequently, the Board was limited in its ability to monitor DEQ activities funded by the Petrofund. Since the Board has responsibility for monitoring the Petrofund and approving Petrofund expenditures, we recommended the Board seek more detailed information from the Cleanup Bureau for all bureau activities funded with Petrofund money.

#### ***Prior Recommendation #8***

*We recommend [the Board] seek more detailed [Cleanup Bureau] reports in order to increase its ability to assess the impact on Petrofund expenditures.*

#### **Present Implementation Status**

**The Board implemented this recommendation.** The department now provides the Board with detailed activity reports of Cleanup Bureau activities. Documentation identifies the time DEQ staff funded by the Petrofund work on remediation activities not eligible for reimbursements.

While the agencies addressed the specifics of the recommendation, during the audit follow-up we noted DEQ also uses Petrofund money for some activities other than remediation. For example, DEQ was charging some administrative costs to the Petrofund, but did not communicate with the Board concerning these activities. In several instances, Board management and staff were unsure what the costs are for. This issue also appears to relate to our inter-agency communication and coordination recommendations addressed in the next section.



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### **The Board, DEQ, and DOJ Need to Improve Interagency Communication**

The original audit report indicated some of the findings resulted from a lack of communication and coordination between the Board and DEQ. The two agencies had not updated the Memorandum of Understanding (MOU), and the MOU did not fully address inter-agency communication and coordination. Additionally, reorganization of state government resulting in the creation of DEQ, growth and change in the Board, and changes and challenges resulting from the 1998 UST requirements altered the agencies' working relationships.

As previously mentioned, the Board relies upon the Fire Marshal to inspect aboveground petroleum storage tanks and provide information to the Board for making eligibility determinations. During the audit, we noted:

- ▶ The Fire Marshal had designated ASTs as a low inspection priority.
- ▶ The Fire Marshal did not have a system for tracking inspections or following up on compliance violations.
- ▶ The state did not have a registration process for ASTs and lacked information about the number of ASTs in the state.

Because these findings affect interagency coordination and Board eligibility determinations, we recommended the agencies develop Memorandums of Understanding.

#### ***Prior Recommendation #9***

*We recommend [the Board] and DEQ jointly initiate revision of the current MOU by specifically outlining mutual understandings for current and future decision-making.*

#### ***Prior Recommendation #10***

*We recommend [the Board] and DEQ seek an MOU with the [Fire Marshal] which comprehensively addresses their respective roles regarding ASTs.*

#### **Present Implementation Status**

**The Board, DEQ, and DOJ partially implemented these two recommendations.** The three agencies initially drafted a three-way Memorandum of Understanding to address the recommendations.

## Chapter III - Implementation Status

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However, the DOJ decided not to sign the MOU because of concerns the Fire Marshal would be obligated to perform activities for which they do not have resources. The Fire Marshal has statutory obligations to conduct fire safety inspections of certain public facilities such as schools and hospitals, as well as investigating fire-related incidents.

Additionally, the Fire Marshal establishes inspection priorities based on risks to life and property. Since ASTs pose a minimal risk, the Fire Marshal has placed a low priority on inspecting ASTs and was unwilling to enter into an MOU they were unable to follow.

The Board and DEQ did not pursue drafting an MOU for their agencies after the DOJ withdrew from the process. The Board and DEQ management stated the MOU drafting process resolved the concerns raised in the original audit. While a formal MOU between the agencies may not be critical at this time, best management practices suggest the purpose of an MOU is to ensure current and future inter-agency activities continue smoothly when personnel, management, or administration changes occur.

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### **AST Eligibility for Petrofund Reimbursements Needs to be Reevaluated**

Owners of aboveground petroleum storage tanks are potentially eligible for Petrofund reimbursements. Although there are structural and operational requirements for ASTs, the state does not require tank owners to register these tanks. However, the Fire Marshal, which regulates ASTs for compliance with the Uniform Fire Code, placed a low inspection priority on ASTs due to other statutory obligations. The Fire Marshal also considers fire-related incidents involving ASTs a lower risk to loss of life than fires in other public buildings and institutions such as schools and day care facilities. The Fire Marshal and local fire officials typically responded that ASTs had not been inspected when the Board requested compliance information.

Without inspection information, the Board cannot determine whether tanks are eligible for Petrofund reimbursements, which can affect Petrofund expenditures. Therefore, we recommended the DEQ, Board, and the Fire Marshal evaluate the feasibility of implementing an AST registration process. If the agencies determined additional regulation is not feasible, we recommended the Board seek clarification of legislative intent regarding AST eligibility for Petrofund reimbursements.

### ***Prior Recommendation #11***

*We recommend:*

- A. [The Board], DEQ, and the [Fire Marshal] formally assess the feasibility of initiating an AST registration process and expanding AST inspection activities, or*
- B. [The Board] should seek legislation to clarify legislative intent regarding AST eligibility for Petrofund remediation reimbursement.*

### **Present Implementation Status**

**This recommendation is partially implemented.** The Fire Marshal evaluated the feasibility of establishing an AST registration process and inspecting more ASTs. The bureau determined these were not viable alternatives since ASTs are a low priority and the bureau does not have the resources to conduct more AST inspections.

The DEQ has not attempted to, and does not plan on, expanding its oversight of ASTs. The Board, which is not a regulatory agency, did not pursue further expansion of AST registration or regulation. However, all three agencies indicated they have increased inter-agency cooperation regarding AST monitoring and regulation.

While the three agencies decided not to pursue implementing an AST registration process, the Board has not requested the legislature clarify whether ASTs should be eligible for Petrofund reimbursements. Without a formal registration process and increased enforcement of AST regulations, the Board continues to be unable to affirmatively determine Petrofund eligibility for ASTs, or the potential impact to the Petrofund.

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### **The Board Should Strengthen the Eligibility Determination Process**

We noted the Board considered a release eligible for Petrofund reimbursements unless they could prove a release was not eligible for reimbursement. Since many tanks had not been inspected, or did not have current inspections, the Board could potentially determine releases eligible although violations existed.

Additionally, we noted the Board did not formally document staff eligibility recommendations presented to management or Board

## Chapter III - Implementation Status

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members. In some instances, it appeared Board staff overlooked eligibility-related information.

Audit work indicated the Board needed to improve consistency in determining whether releases were eligible for reimbursements and assure only eligible releases receive Petrofund reimbursements. We recommended the Board develop procedures to meet these needs.

### ***Prior Recommendation #12***

*We recommend [the Board]:*

- A. Develop a proactive eligibility determination process to affirmatively assess tank owner compliance with all required Petrofund eligibility criteria.*
- B. Require staff to complete eligibility summaries for all Petrofund eligibility applications.*

### **Present Implementation Status**

**The Board implemented this recommendation.** The Board, in coordination with DEQ, adopted a “positive assurance” approach for eligibility determinations. First, the department’s new management information system increased the department’s ability to provide the Board with more detailed UST and related compliance information. Second, DEQ and the Board now require tank owners to submit tank information and operating records to demonstrate substantial compliance with state and federal regulations before the Board determines whether a release is eligible for Petrofund reimbursements. DEQ and Board management and staff stated the new process provides more assurance only eligible releases receive Petrofund reimbursements.

The Board also revised its eligibility determination checklist. Staff must provide detailed documentation supporting their eligibility recommendations. Board management or a lead worker also review staff recommendations to assure recommendations are reasonable and supported. The Board decided to continue writing complete eligibility summaries only when tank owners request an eligibility hearing before the Board. However, the revised eligibility checklist provides more eligibility-related information for Board members and management. The revised checklist generally addresses our recommendation.

The “positive assurance” approach adopted by the Board refers primarily to eligibility determinations for underground storage tanks. The Board remains significantly limited in its ability to make affirmative eligibility determinations of aboveground storage tanks. Since the state does not require tank owners to register aboveground tanks, and the Fire Marshal does not have the resources to conduct regular inspections of aboveground tanks, the Board still receives minimal or no compliance information about aboveground storage tanks.

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### **The Board Should Determine Eligibility Before Processing Claim Applications**

Reimbursing tank owners and consultants for remediation costs is a two- step process. The first step is determining whether releases are eligible for reimbursement. The Board requests tank and compliance information from DEQ, the Fire Marshal, and local fire officials to determine eligibility. The second step is processing claims for remediation costs. Board and DEQ staff review claims to verify claimed costs are necessary, reasonable, actual, and eligible. The Board then reimburses tank owners or consultants for cleanup work at eligible releases.

During the audit, we noted Board staff sometimes processed eligibility requests at the same time they processed corresponding claim applications. Consequently, staff sometimes processed, but did not reimburse, claims for cleanup work at releases not eligible for Petrofund reimbursements. To improve efficiency and reduce staff workload, we recommended the Board only process claims for reimbursement after the Board determines the release Petrofund-eligible.

#### ***Prior Recommendation #13***

*We recommend [the Board] discontinue processing reimbursement claims prior to determining tank owners’ Petrofund eligibility.*

#### **Present Implementation Status**

**The Board implemented this recommendation.** Board staff log all claims into the management information system as claims are received. If the system indicates the claims are for a release not determined eligible, staff discontinue processing the claim until the release is determined eligible.

## Chapter III - Implementation Status

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### **The Board Should Examine Procedures for Controlling Reimbursements for Administrative Costs**

We identified instances when the Board reimbursed tank owners or consultants for administrative costs that did not appear to be eligible for reimbursement. Also, Board staff did not always follow an informal Board policy for reimbursing administrative costs. We recommended the Board examine procedures for reviewing and approving administrative costs, and develop procedures to improve consistency for reimbursing administrative costs.

#### ***Prior Recommendation #14***

*We recommend [the Board] examine the procedures for the review of payment of consultant's administrative costs to ensure consistency and compliance with Board rules.*

#### Present Implementation Status

**The Board implemented this recommendation.** Board members decided not to implement a formal policy. However, Board management drafted policies for approving administrative costs. Board management or a lead worker also review processed claims to help ensure claim reviewers apply policies uniformly.

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### **The Board Should Authorize the Executive Director to Approve Reimbursements of Initial Claims**

The Board had granted the executive director authority to approve reimbursement of eligible claim costs that are less than \$10,000. However, the Board required all first-time claims be reviewed and approved by the Board, even when the Board had already determined a site eligible for reimbursements. Consequently, the Board delayed reimbursing first-time claims for eligible releases until the next Board meeting. We recommended the Board grant the executive director authority to pay all Petrofund reimbursements that are less than \$10,000. By implementing this recommendation, we believed the Board could reduce the time needed to pay claims and reduce workload for Board members.

#### ***Prior Recommendation #15***

*We recommend [the Board] provide the executive director with the authority to approve and process initial claims under \$10,000.*

#### Present Implementation Status

**The Board implemented this recommendation.** The Board authorized the executive director to process all claims under \$10,000.

However, the executive director refers questionable claims that are less than \$10,000 to the Board for review. Board management said claim reimbursements are paid more quickly now.

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### **The Board Needs to Develop Policies and Procedures**

During the original audit, we noted Board staff applied informal eligibility and claim processing standards inconsistently. Additionally, the Board had experienced significant staff turnover that contributed to the problem. We recommended the Board develop and implement formal policies and procedures to address the concerns.

#### ***Prior Recommendation #16***

*We recommend [the Board] formally develop and implement policies and procedures regarding eligibility determinations and claim review processes.*

#### **Present Implementation Status**

**The Board is implementing this recommendation.** The Board is drafting policies and procedures for processing eligibility and claim applications. They also are developing a training and guidance manual to assist employees in performing their duties. The manual also informs employees about the responsibilities of different staff positions. The Board has not formally adopted the policies and procedures.

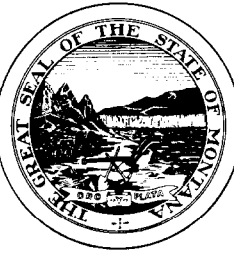




## **Agency Response**



# DEPARTMENT OF ENVIRONMENTAL QUALITY



MARC RACICOT, GOVERNOR

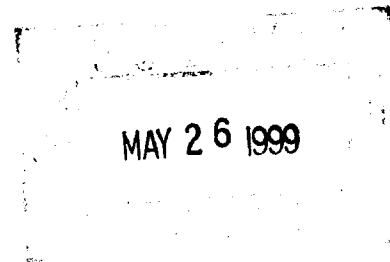
STATE OF MONTANA

(406) 444-2544

PO BOX 200901  
HELENA, MONTANA 59620-0901

May 26, 1999

Jim Pelligrini, Deputy Auditor  
Legislative Audit Division  
P.O. Box 201705  
Helena, MT 59620-1705



Dear Jim:

By this letter, I am transmitting the Department of Environmental Quality's formal response to your follow-up of the Petroleum Storage Tank Release Activities audit. Our response includes updated responses for prior recommendations #3, #5, #6, #7, #9 and #10 since these recommendations were found to be partially implemented, still in the process of being implemented, or simply not implemented. We have also provided a comment on prior recommendation #8. Even though this recommendation has been implemented, the legislative auditor's staff have recommended additional steps be taken in this matter as a result of their follow-up audit. Finally, I also am transmitting a response on behalf of the Petroleum Release Compensation Board (PTRCB) for prior recommendation #11.

I would like to personally thank your office and the audit staff that was assigned to this endeavor for their dedication and professionalism throughout the course of this follow-up. Their findings and subsequent recommendations have provided a valuable service and insight to department management relative to our responsibilities in this area.

I will be available, along with appropriate staff, for the next meeting of the Legislative Audit Committee.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Simonich".

Mark Simonich  
Director

cc: Dave Thorsen, Administrator  
Centralized Services Division

## **Department of Environmental Quality**

<b>Responses to the Legislative Audit Division Follow-up on the Petroleum Storage Tank Release Activities Audit</b>
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### **Prior Recommendation #3**

We recommend DEQ's Technical Services Bureau develop, formalize, and implement comprehensive policies and procedures for the program's area of responsibility.

Implementation Status: The department is implementing the recommendation.

#### **Department Response:**

As reported in DEQ's interim report dated May 1, 1998, the department has established and implemented several procedures in response to the audit findings. These include procedures for documenting and citing violations and for reporting compliance information to the PTRCB. These procedures have improved consistency among program personnel in these areas and therefore address, in part, some of the issues that were reported in the audit. In addition, the department has drafted several policies to guide program implementation, but these policies are not yet final. The department will complete these policies by September 30, 1999.

### **Prior Recommendation #5**

We recommend the Board and DEQ develop and implement a standardized policy and procedure for categorizing releases.

Implementation Status: The department is implementing this recommendation.

#### **Department Response:**

This policy will be completed by July 31, 1999 in collaboration with the Board.

### **Prior Recommendation #6**

We recommend the Board and DEQ:

- A. Require all Petrofund claims to be specifically referenced to applicable work plan sections; and,
- B. Establish a procedure that allows comparisons of estimated remediation costs to claimed remediation costs and initiates a subsequent evaluation of any differences.

Implementation Status: The Board and DEQ have not implemented this recommendation.

#### **Department Response:**

The DEQ agrees that linking claims to work plan tasks would aid in the review of reimbursement application to ensure that costs claimed are actual and necessary, and to

further enhance the Board's understanding of this entire process. Effective July 1, 1999, DEQ will begin providing staff support to the PTRCB as required by HB 617, and will propose and recommend a system for implementing this recommendation and present it to the Board at its August 2, 1999 meeting.

**Prior Recommendation #7**

We recommend the Board and DEQ initiate joint, scheduled discussion of release remediation priorities.

Implementation Status: DEQ is implementing the recommendation.

**Department Response:**

As committed by the department in response to the audit findings, we have substantially refined and upgraded the prioritization scheme for petroleum releases to better assess potential impacts to human health or safety and the environment from those releases. This scheme has been implemented, although it continues to form a basis for allocating resources for site remediation. To enhance the effectiveness of site prioritization, the department staff will routinely schedule an item on the agenda for future Petro Board meetings, intended for the discussion of and DEQ staff recommendations for document and schedule preparation and policy direction reflecting the Board's priorities for release remediation.

**Prior Recommendation #8**

We recommend the Board seek more detailed [Cleanup Bureau] reports in order to increase its ability to assess the impact on Petrofund expenditures.

Implementation Status: The Board implemented this recommendation.

**Department Comments:**

Although this recommendation has been implemented, the auditor further recommends that the DEQ explain certain administrative costs to the PTRCB. The Department thought that it had complied with all expenditure report requests from the Board. Nonetheless, to further clarify, the costs referred to are simply clerical and administrative support staff costs for the technical program staff, all of which is funded by the agency's appropriation from the Petrofund. These costs are typical and not out of the ordinary. If the Board wishes more detailed information on clerical, administrative, and management support costs, such reports can and will be provided.

It appears that some Board staff alleged that unless the Board had sufficient DEQ expenditure reports, they would not be in a position of judging fund impact; and that appears to be the reason this particular additional recommendation was advanced by the audit staff. This agency would dispute that contention in view of the fact that since DEQ operates from a legislative appropriation from the fund for the activities in question, that fact and the amount of the appropriation is what will give the Board a perspective on fund

impact. Detailed expenditure reports that are voluntarily provided to the Board for their information, at whatever level of detail the Board may desire, only gives the Board a unique insight into how the agency is spending its appropriation. Such information does not give the members of the PTRCB any particular advantage or insight into the solvency of the fund.

**Prior Recommendation #9**

We recommend the Board and DEQ jointly initiate revision of the current MOU by specifically outlining mutual understanding for current and future decision-making.

**Prior Recommendation #10**

We recommend the Board and DEQ seek an MOU with the Fire Marshal which comprehensively addresses their respective roles regarding ASTs.

Implementation Status: The Board, DEQ and DOJ partially implemented these two recommendations.

**Department Response for Both 9 and 10:**

As a result of HB 617 and effective July 1, 1999, the DEQ is currently making preparations to support the PTRCB with functions previously provided by its own staff. Once a support arrangement is mutually acceptable by the PTRCB and DEQ, it would be appropriate at that time to determine whether or not there is a real need for an MOU between DEQ and the Board and between those same parties and the Department of Justice.

Regarding AST compliance and eligibility for the Petrofund, HB 58 was introduced and passed in this past legislative session by request of the Board to enable the Board to stipulate the eligibility requirements for reimbursement from the Petrofund. HB 58 included authority for the Board to identify the compliance standards for ASTs that will prevent or abate the effects of petroleum releases, based on the Uniform Fire Code. The board is in the process of revising its rules, in consultation with the Fire Marshal, to specify the eligibility criteria for releases from ASTs. These rules are expected to reduce the direct involvement of the DOJ for determining AST compliance and will provide the DEQ and the board with the information needed (i.e., eligibility criteria) to determine whether there are any AST violations that might have contributed to a petroleum release.

**Prior Recommendation #11**

We recommend:

- A. The Board, DEQ, and the Fire Marshal formally assess the feasibility of initiating an AST registration process and expanding AST inspection activities, or
- B. The Board should seek legislation to clarify legislative intent regarding AST eligibility for Petrofund remediation reimbursements.

Implementation Status: This recommendation is partially implemented.

**Department Response:**

Part (A): The department (DEQ) initially assessed the feasibility of initiating an AST registration process and determined that it was not viable under current staffing and fiscal resource allocations. Additionally, the agency did not have the statutory authority to regulate ASTs and would have had to seek legislation for such authority had it determined to proceed with such a program. Since the original recommendation was made, the Department of Justice has determined, independent of this agency, to place a lower priority on AST inspections, and as such rejected the notion of developing an AST registration program. Subsequently, this determination became a significant factor in DEQ's ultimate decision. Also, refer to response on prior recommendations 9 and 10, above.

Part (B) of this prior recommendation was intended as a recommendation directly to the Board itself and therefore, the Board will respond to this follow-up recommendation.

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**Prior Recommendation #11 (B)**

From the Petroleum Release Compensation Board

B. The PTRCB did request the introduction of legislation (HB 58) to allow the Board to more narrowly define, in rules, what constitutes compliance for both Aboveground (AST's) and Underground Storage Tanks (UST's). This new rulemaking should greatly improve the ability of the Board to affirmatively determine Petrofund eligibility.

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# DIVISION OF CRIMINAL INVESTIGATION

DEPARTMENT OF JUSTICE  
STATE OF MONTANA

Joseph P. Mazurek  
Attorney General



PO Box 201417  
303 N Roberts  
Helena, MT 59620-1417  
(406) 444-3874 or 3875  
FAX: (406) 444-2759

May 28, 1999

Mr. Jim Pellegrini, Deputy Auditor  
Legislative Audit Division  
Room 135, State Capitol Bldg.  
Helena, MT 59620

MAY 28 1999

Dear Mr. Pellegrini:

I have received and carefully reviewed your final report of the petroleum storage tank release activities audit. We believe the report adequately represents the views of the Department of Justice (DOJ), State Fire Marshal's Office, relative to the reports implementation status findings. The report clearly illustrates our main concern, which is a lack of sufficient resources to adequately provide inspection information to the Petroleum Tank Release Compensation Board (PTRCB) for eligibility determinations. Given our limited resources, the DOJ has chosen to focus its resources on the inspection of facilities that have the greatest potential for loss of life, i.e. schools, daycare centers, hotel/motels, etc.

It also has become quite obvious to us that fire code violations are rarely used as a determining factor in the PTRCB decisions to help eligible tank owners pay for cleaning up petroleum releases. Fire code violations that are found at sites are usually minor violations which pale in comparison to the environmental concerns.

The State Fire Marshal's Office is currently taking an active role toward educating tank owners about potential fire code hazards. (For example, we recently completed an above-ground storage tank guide for motor vehicle fuel dispensing, farms/ranches, bulk plants, private fueling facilities, marinas and airports.) We've also proposed cross training DEQ employees about fire code violations that may occur at tank sites, thereby avoiding inspection duplication.

Thank you for the opportunity to comment on your audit report. My staff and I will be happy to provide any knowledge or insights concerning this issue to you and your staff or the Legislative Audit Committee. Please let us know.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Batista".

Mike Batista, Administrator  
Division of Criminal Investigation



# PETROLEUM TANK RELEASE COMPENSATION BOARD



MARC RACICOT, GOVERNOR

STATE OF MONTANA

PHONE: (406) 444-0925  
FAX: (406) 444-1902

PO BOX 200902  
HELENA, MONTANA 59620-0902

June 8, 1999

Jim Pelligrini, Deputy Auditor  
Legislative Audit Division  
P O Box 201705  
Helena, MT 59620-1705

Dear Jim Pelligrini:

This letter is to formally transmit the Petroleum Tank Release Compensation Board response to the follow-up of the Petroleum Storage Tank Release Activities performance audit. The Board agrees with the Department of Environmental Quality response to recommendation #6.

The Board met on June 7, 1999 and adopted the current Board policies and staff procedures. Effective July 1, 1999, DEQ will begin providing staff support to the PTRCB as required by HB 617. Several of the procedures will change due to HB 617 and will be adopted by the Board in the future.

Please contact Paul W. Hicks at 444-0936 if you have any questions or need further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Hornbacher".

Tim Hornbacher  
Chairman

## **Petroleum Tank Release Compensation Board**

### **Response to the Legislative Audit Division Follow-up on the Petroleum Storage Tank Release Activities Audit dated June 1999**

#### **Prior Recommendation #16**

We recommend [ the Board] formally develop and implement policies and procedures regarding eligibility determinations and claim review processes.

#### **Board Response:**

On June 7, 1999, the Board reviewed and adopted the written policies and procedures pertaining to the eligibility and claims process. Additionally the Board completed a review of the database and work plans procedures.